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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 268

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

E. MORGAN GRINNELL, AS EXECUTOR OF THE ESTATE OF ANNIE STONE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 7, 1934
CERTIORARI GRANTED OCTOBER 8, 1934

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1 Before United States Board of Tax Appeals

Docket No. 49401

E. MORGAN GRINNELL, AS EXECUTOR OF THE ESTATE OF ANNIE STONE, petitioner

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket entries

Appearances:

For petitioner: Bernhard Knollenberg, Esq., Harry J. Rudick, Esq.

For respondent: P. A. Bayer, Esq.

1930

June 30—Petition received and filed. Taxpayer notified. (Fee paid.)

July 1—Copy of petition served on general counsel.

Aug. 7—Answer filed by general counsel.

" 16—Copy served on taxpayer—General Calendar.

Nov. 3—Order placing on Circuit Calendar for New York City entered.

1932

Dec. 22—Notice of hearings at New York City beginning January 16, 1933.

1933

Jan. 17—Hearing had before E. H. Van Fossan, division 9. Submitted on merits. Briefs due in 60 days. Called from calendar call January 16, 1933.

" 28—Transcript of hearing of January 17, 1933, filed.

Mar. 18—Brief filed by general counsel.

2 Mar. 24—Motion for extension to March 24, 1933, for filing briefs filed by taxpayer. March 24, 1933, granted.

" 24—Brief filed by taxpayer.

May 5—Memorandum opinion rendered—Ernest H. Van Fossan, division 9. Decision will be entered for respondent.

" 10—Decision entered—E. H. Van Fossan, division 9.

" 25—Petition for review by U. S. Circuit Court of Appeals (Second) with assignments of error filed by taxpayer.

June 1—Proof of service filed by taxpayer.

" 22—Statement in lieu of statement of evidence filed.

" 22—Praecipe filed.

" 29—Proofs of service filed.

Before United States Board of Tax Appeals

[Title omitted]

Petition

Filed June 30, 1930

The above-named petitioner hereby petitions for a redeter-
3 mination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (MT–ET–C1–2439–CW) dated May 23, 1930, and as a basis of his proceeding alleges as follows:

(1) The petitioner is the executor of the estate of Annie Stone, deceased, and resides at 910 Park Avenue, New York, New York.

(2) The notice of deficiency (a copy of which is annexed hereto and marked "Exhibit A") was mailed to the petitioner on May 23, 1930.

(3) The taxes in controversy are estate taxes for the year 1927 and for $6,061.15.

(4) The determination of tax set forth in the said notice of deficiency is based upon the following error:

The Commissioner erred in including in the gross estate of the decedent $75,764.26, representing the value of certain property over which the decedent had a power of appointment.

(5) The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The decedent Annie Stone died on September 24, 1927, a resident of the State of Connecticut.

(b) The pertinent provision of her will which was executed May 13, 1899, and which was duly probated January 4th, 1928, are as follows:

"Fifth. All the rest, residue and remainder of my estate, both real and personal, of every kind and description and wheresoever
4 situated, including whatever property or money I am allowed to dispose of by will under the will of my dear father, the late Dr. John O. Stone, of the city of New York, I give, devise, and bequeath in equal shares to my dear sisters Ellen J. Stone and Sarah J. Grinnell, the latter the wife of E. Morgan Grinnell, to have and to hold the same to them, their heirs, executors, administrators and assigns forever."

(c) John O. Stone, the father of the decedent and of Ellen J. Stone and Sarah J. Grinnell, died on June 7th, 1876, a resident of the State of New York.

(d) The pertinent provisions of his will which was executed June 3, 1870, and which was duly probated June 26th, 1876, were as follows:

"Fifth. All the residue of my estate, real, and personal, whatsoever and wheresoever including the reversion of the house No. 27 West 23rd Street, or the proceeds thereof upon the termination

of my wife's life estate, I give, devise and bequeath unto my executors, hereinafter named, and the survivor of them and their successors lawfully to be appointed, in trust and to, for, and upon the uses following, that is to say, to divide the same into as many shares as there shall be children of mine surviving me or who shall have died before me leaving issue surviving me, to keep the whole thereof well and safely invested so that it may produce a regular income with power from time to time as occasion may require to change the investment of the same or any part thereof, and
5 to apply the income of each share until the child for whom that share is designated shall attain the age of twenty-one years, to the suitable maintenance and education of such child and from and after the time when each of my children, who shall survive me shall attain the age of twenty-one years, to apply to her use for life the income of the share set apart to her as aforesaid upon her sole and separate receipt free from all control, claim, or obligation of any husband she may have, and upon the death of my children respectively their respective shares of my estate shall go and be applied to such persons, and such uses as they respectively may appoint by last will and testament, and in default of such appointment their respective shares of my estate shall go and belong to their children or issue respectively, by right of representation, or in default of such issue to their next of kin, and as respects the shares of my said residuary estate set apart for the issue of children of mine who shall have died before me to apply the income of each such share to their education and maintenance during minority and to pay over or transfer to each of such issue upon attaining or who shall have attained the age of twenty-one years, his or her share in full."

(e) John O. Stone left him surviving his widow, Catherine C. Stone (who died many years before the death of Annie Stone) and his three daughters, Annie Stone, Ellen Stone, and Sarah J. Grinnell, his only children, heirs at law and next of kin.

6 (f) Annie Stone, the decedent, died unmarried, without issue and leaving as her sole next of kin, her sisters, the said Ellen J. Stone and Sarah J. Grinnel.

(g) The value of the property left in trust for the life of Annie Stone under the fifth paragraph of her father's will (quoted above) and over which she had a power of appointment at the time of her death was $75,764.26.

(h) In February 1928 Ellen J. Stone and Sarah J. Grinnell executed an instrument of election whereby they renounced their right to receive said property under the fifth paragraph of decedent, Annie Stone's, will, and elected to take such property under the fifth paragraph of the will of their father, John O. Stone.

(i) At the time of Annie Stone's death and prior thereto the trust property in question was physically located in the State of New York.